

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAUREN BAUMGARTNER,
Plaintiff,
v.
NANCY A. BERRYHILL,
Defendant.

Case No.16-cv-05384-HRL

**ORDER RE: CROSS-MOTIONS FOR
SUMMARY JUDGMENT**

Dkt. Nos. 27, 33

Plaintiff Lauren Baumgartner (“Baumgartner”) appeals a final decision of the Commissioner of the Social Security Administration (the “Commissioner”) denying Baumgartner’s application for disability benefits under Titles II and XVI of the Social Security Act. The parties filed cross-motions for summary judgment. Dkt. Nos. 27, 33. All parties consented to magistrate judge jurisdiction. Dkt. Nos. 15, 17.

For the reasons described below, the Court denies Baumgartner’s motion for summary judgment and grants the Commissioner’s cross-motion for summary judgment.

I. FACTUAL BACKGROUND

Baumgartner was born in 1980 in Maryland. AR 1537. She attended Bryn Mawr College, but dropped out around her junior year following a dispute with a professor. AR 64-65. She worked for about a year as an assistant librarian in Bryn Mawr, and then was a receptionist/medical assistant at a Planned Parenthood clinic in Philadelphia. AR 66-67. Most recently, she was a leasing consultant for a residential apartment management company. Baumgartner resigned after her manager complained that she was missing too much work due to medical issues. AR 65-66. She has not had a full-time job since 2006.

Baumgartner’s life has been punctuated by trauma. Her parents, especially her father, were

1 physically and emotionally abusive. AR 1537, 1594. As a teenager, Baumgartner was anorexic.
2 AR 1112. At sixteen, she was raped. AR 802. She later married and gave birth to a daughter, but
3 her husband was abusive to the point that Baumgartner obtained restraining orders against him.
4 AR 1284. A subsequent boyfriend sexually molested her daughter. AR 1537. Baumgartner and
5 her daughter, who is dyslexic, have been homeless for extended periods. *Id.*

6 When she was fifteen, Baumgartner fell off of a horse, injuring her lower back. AR 580.
7 Ever since, she has complained of lower back pain that extends down to her legs. *Id.* An MRI in
8 2011 revealed mild degenerative disc disease at the L4-L5 vertebrae (the fourth and fifth vertebrae
9 of the lumbar spine) and the L5-S1 vertebrae (the fifth vertebra of the lumbar spine and the first of
10 the sacrum). AR 1078.¹ A doctor summarized the MRI as showing “some mild arthritis but
11 otherwise normal.” AR 1076. By May 2015, an x-ray showed “marked narrowing of the L5-S1
12 disc space.” AR 1539.

13 Baumgartner has also experienced chronic pain in her pelvic region since around 2003,
14 when she had an IUD inserted and then removed a few months later. Ever since the IUD was
15 removed, she has experienced severe pain, especially during menstruation. Baumgartner testified
16 that she’s essentially non-functional during her periods, which she said are irregular and
17 unpredictable. AR 71. “I’ll be in bed normally for at least about five days. I’ll be in bed all day
18 and all night.” *Id.* Baumgartner’s daughter cares for Baumgartner – and for herself – while
19 Baumgartner is incapacitated by pelvic pain. AR 71-73. Baumgartner homeschools her daughter
20 because the pelvic pain is so debilitating that Baumgartner did not believe she could ensure her
21 daughter’s consistent attendance at a public school.

22 In 2013, a consultative examiner, Dr. Farah M. Rana, noted that Baumgartner exhibited
23 “[m]ild lower back tenderness,” but that her “range of motion [was] within normal limits.” Dr.
24 Rana’s impression was that Baumgartner’s chronic lower back pain was “most probably secondary
25 to degenerative disc/degenerative joint disease,” and added that her “[c]hronic pelvic pain is of
26 questionable etiology.” AR 132.

28 ¹ The ALJ’s written decision incorrectly cites to AR 609.

1 The medical record suggests that Baumgartner's doctors have generally advocated a
2 conservative approach to treating her pain symptoms, and that Baumgartner has declined more
3 aggressive treatments. In 2009, a doctor recommended hormone-induced amenorrhea (the
4 absence of menstruation), but Baumgartner declined. AR 657. According to Baumgartner, she
5 tried hormonal suppression of her menstrual cycles before and it only made the problem worse.
6 AR 1527. As of October 2010, when Baumgartner was complaining of increasingly debilitating
7 pelvic and lower back pain, she was taking only zolpidem (commonly known as Ambien) to help
8 her sleep, and 800 milligrams of ibuprofen. Baumgartner's pain management specialist
9 recommended that she take naproxen (commonly known as Aleve), desipramine (an anti-
10 depressant), and an anti-seizure medication. AR 1133-34. The pain management specialist also
11 recommended that Baumgartner continue physical therapy, which seemed to provide significant
12 pain relief, but child care responsibilities made it difficult for Baumgartner to attend the therapy
13 sessions. In 2014, Baumgartner's treating physician, Dr. Andrea Aslan, also recommended
14 hormone-induced amenorrhea, but Baumgartner declined again, preferring to treat her pain
15 through physical therapy. AR 1457. In 2015, after Baumgartner was diagnosed with
16 fibromyalgia, Dr. Aslan opined that weakness in Baumgartner's pelvic floor muscles was "likely a
17 big part" of Baumgartner's pain, especially because physical therapy had previously provided pain
18 relief. AR 1530. Dr. Aslan asked Baumgartner to consider undergoing a laparoscopy, a surgical
19 procedure used to diagnose abdominal issues, but Baumgartner declined. AR, 1530, 1636.

20 In addition, Baumgartner is overweight. She is about five feet, three inches tall, and
21 between 2009 and 2013, her weight fluctuated between 142 pounds and nearly 200. AR 46-47.

22 Finally, Baumgartner has a history of mental health problems, including depression,
23 anxiety, and a personality disorder.

24 When asked to assign Baumgartner a global assessment of functioning (GAF) score,
25 mental health professionals have reached divergent conclusions. Some providers assigned
26 Baumgartner GAF scores as low as 65 (indicating moderate symptoms, such as difficulty in social
27 situations and occasional panic attacks). Others gave her scores as high as 100 (indicating no
28 symptoms at all). AR 24. There is more consensus, however, as to how Baumgartner's demeanor

1 speaks to her mental health. Baumgartner has been noted to show signs of depression and anxiety,
2 and she admitted to fleeting suicidal ideation, AR 1632, but she has consistently presented a
3 cooperative, well-appearing, and mostly normal affect. *See, e.g.*, AR 1623.

4 In June 2010, Dr. Vanessa Wallace-Suhama opined that Baumgartner “presents a text book
5 case of chronic pain syndrome compounded by psychological factors.” AR 583. Dr. Wallace-
6 Suhama observed that Baumgartner’s “main complaint of ‘pelvic pain’ [] appears to have been
7 well addressed” by physical therapy and analgesics. AR 580. She added that “[a]s much as pain
8 is an important issue for this patient, the overwhelming need at this time is to help stabilize her
9 psychologically.” AR 583. About a year later, another doctor echoed Dr. Wallace-Suhama’s
10 observation about the psychological component of Baumgartner’s pain symptoms, stating that
11 “[t]here appears to be a strong emotional and cognitive behavioral component perpetuating her
12 chronic pain.” The doctor recommended “conservative care,” consisting primarily of physical
13 exercise. AR 1223.

14 Patricia Spivey, Psy.D., a consultative examiner, prepared a mental status disability report
15 on Baumgartner in May 2013. Spivey diagnosed Baumgartner with an anxiety disorder, and
16 stated that she would experience mild limitations in her ability to withstand the stress of a routine
17 work day, and moderate impairment in her ability to maintain emotional stability and interact
18 appropriately with others. AR 1330-31. Spivey opined that “[b]y presentation she is not so severe
19 that she could not work. She may have some mood problems or interpersonal problems with peers
20 or supervisors.” *Id.*

21 In May 2015, during a psychological evaluation, Baumgartner described her mood as
22 “really stressed” due to the disability benefits application process. AR 1536. Baumgartner
23 reported “her overall health as ‘very good’ apart from chronic pain.” *Id.* The evaluator reported:

24 “She is independent with all daily activities.. She eats regular meals
25 and maintains a daily exercise regimen. During the day, she goes to
26 the gym, home schools her daughter, shops and cooks, drives herself
27 and her daughter to appointments, and sends emails or makes phone
28 calls (“I’m pretty busy”). She described good social support from
other ‘disabled and homeless’ friends[.]”

Id.

Dr. Aquino-Caro, a state medical consultant, initially concluded that Baumgartner's mental impairments did not appear to create severe limitations. "She reported a great deal of abuse," but her "affect [was] full and congruent" and "[m]emory was fine as was concentration." AR 108. On reconsideration, Dr. Davis, another state medical consultant, endorsed Dr. Aquino-Caro's earlier conclusion. Dr. Davis pointed to Dr. Spivey's assessment that Baumgartner's mental health was mostly within normal limits. AR 139-40.

II. PROCEDURAL BACKGROUND

Baumgartner applied for disability benefits under Title II in November 2012, AR 362-370, and for Title XVI benefits in December 2012, AR 371-75. The Commissioner denied Baumgartner's claims initially, AR 164-73, and upon reconsideration, AR 169-73, and Baumgartner requested a hearing before an administrative law judge, AR 192-93. After multiple postponements, ALJ Brenton L. Rogozen (the "ALJ") presided over a hearing in September 2015.

At the hearing, three witnesses testified, including Baumgartner. The first, Dr. Irvin S. Belzer, discussed his review of the medical records. He testified that none of Baumgartner's conditions met or equaled an impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. AR 52. He also discussed how psychological factors might affect Baumgartner's experience of pain. Dr. Belzer testified that he had not reviewed Baumgartner's mental health records carefully, but he agreed that the diagnosis of "chronic pain compounded by psychological factors" might affect Baumgartner's experience of pain. He also said that it would be possible for someone with chronic pelvic pain symptoms to become "essentially non-functional." AR 62-63. Finally, when the ALJ asked, "So do you think that her [residual functional capacity] if we were to take into consideration her pain to the extent that you find it credible . . . do you think that pain would further limit the RFCs?" Belzer answered yes. "It could. To me it would go toward that she might have to miss work more – she might have to miss work because of pain." AR 63.

Darlene McQuary, a vocational expert, also testified. McQuary matched Baumgartner's prior jobs with the corresponding entries in the Dictionary of Occupational Titles. According to McQuary, all of Baumgartner's prior relevant work required only a minimal amount of physical strength. AR 79-81.

The ALJ issued a written decision in May 2016. AR 21. After concluding that Baumgartner met the insured status requirement for Title II benefits, AR 23, the ALJ considered Baumgartner’s claim of disability with the five-step, sequential evaluation approach that is required by the Commissioner’s regulations. *See* 20 C.F.R. § 404.1520.² At step one, the ALJ found that despite some intermittent work activity, Baumgartner had not performed substantial gainful activity since the alleged onset date of her disability (March 2006). AR 23. At step two, the ALJ found that Baumgartner had three impairments that qualified as severe: (1) back pain; (2) pelvic pain; and (3) obesity. *Id.* The ALJ concluded that Baumgartner’s mental impairments were not severe. AR 23-26. At step three, the ALJ determined that none of Baumgartner’s impairments or combinations thereof met or was medically equal to the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. AR 26.

At step four, the ALJ found that Baumgartner had a residual functional capacity (“RFC”) to perform “the full range of light work as defined in” 20 C.F.R. §§ 404.1567(b). AR 27-35. The ALJ concluded that, based on her RFC, Baumgartner could perform her past relevant work as a medical assistant and a library assistant. Having determined that Baumgartner could perform her past relevant work, and that she was therefore not disabled, the ALJ did not proceed to step five of the sequential evaluation.

The ALJ accorded substantial weight to the opinions of the state agency medical consultants. AR 25. The consultants determined that Baumgartner had “mild low back tenderness,” and noted that she was taking “low grade opiates for mild [degenerative disc disease] and other mild abnormalities.” AR 156. They concluded that she could perform light work with some postural limitations. *Id.*

The ALJ also determined that Baumgartner’s allegations as to the severity of her pain symptoms were not entirely consistent with the medical record. The ALJ argued that “physical examinations have been within normal limits or shown few objective findings, generally limited to tenderness [in] the claimant’s pelvic and lumbar musculature[.]” AR 34. The ALJ also noted that

² The Title II and Title XVI regulations are often identical. Accordingly, for the remainder of this order, and unless otherwise noted, the Court will cite to the Title II regulations.

1 Baumgartner had refused recommended treatment, including hormone-induced amenorrhea, and a
2 laparoscopy. AR 24. Finally, the ALJ argued that Baumgartner's activities of daily living,
3 including exercise, homeschooling her daughter, and performing housework, were all inconsistent
4 with the level of alleged impairment. AR 34.

5 As to her mental impairments, ALJ noted that Baumgartner's "mental status examinations
6 have routinely been within normal limits, except for mood changes," and he emphasized her
7 independence in daily activities, as well as her description of a strong, supportive social network.
8 AR 34-35. The ALJ concluded (at step two of the sequential analysis), that Baumgartner had no
9 more than mild limitations in her activities of daily living, social functioning, and concentration,
10 persistence and pace. *See* 20 C.F.R. § 404.1520a (describing broad functional areas by which
11 ALJs must evaluate mental impairments).

12 The Appeals Council denied Baumgartner's request to review the ALJ's decision, and
13 Baumgartner sought judicial review in this Court. Dkt. No. 1.

14 **III. LEGAL STANDARD**

15 This Court has jurisdiction to review the Commissioner's decision to deny benefits, but
16 must affirm if the Commissioner's decision applies the correct legal standards and is supported by
17 substantial evidence. 42 U.S.C. § 405(g) ("findings of the Commissioner ... as to any fact, if
18 supported by substantial evidence, shall be conclusive"); *Molina v. Astrue*, 674 F.3d 1104, 1110
19 (9th Cir. 2012). Substantial evidence is "such relevant evidence as a reasonable mind might
20 accept as adequate to support a conclusion," and is "more than a mere scintilla, but may be less
21 than a preponderance." *Molina*, 674 F.3d. at 1110-11 (citations omitted). A court must consider
22 the record as a whole when assessing whether the Commissioner's decision is supported by
23 substantial evidence. *See Howard v. Heckler*, 782 F.2d 1484, 1487 (9th Cir. 1986). "If the
24 evidence is susceptible to more than one rational interpretation, the court may not substitute its
25 judgment for that of the Commissioner." *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir.
26 2001) (citations omitted).

27 "[E]ven when the ALJ commits legal error," however, the reviewing court is to "uphold
28 the decision where that error is harmless." *See Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th

Cir. 2015) (internal quotation marks and citation omitted). An error is harmless only if it is “inconsequential to the ultimate nondisability determination.” *Id.* at 494 (citation omitted).

IV. DISCUSSION

All of Baumgartner’s arguments boil down to a claim that the ALJ erred in considering her mental impairments. She contends, first, that the ALJ incorrectly determined, at step two of the sequential analysis, that she did not have a severe mental impairment. Baumgartner argues that, had the ALJ considered how psychological factors compound her perception of pain, the ALJ would have concluded that she had a severe mental impairment. Dkt. No. 27 at 11-13. Second, Baumgartner asserts that the ALJ’s conclusion that Baumgartner experiences only mild impairment in her social functioning was not supported by substantial evidence. Dkt. No. 27 at 14-15. The remainder of Baumgartner’s summary judgment motion further develops the argument that the ALJ’s conclusion as to her mental impairment was incorrect.

An impairment is severe if it “significantly limits [the claimant’s] physical or mental ability to do basic work activities[.]” 20 C.F.R. § 404.1520. “[A] finding of ‘not disabled’ is made at this step when medical evidence establishes only a slight abnormality or a combination of slight abnormalities which would have no more than a minimal effect on an individual’s ability to work[.]” SSR 85-28, 1985 WL 56856, at *3. The step-two inquiry is a “de minimis screening device [used] to dispose of groundless claims.” *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005) (citation omitted). “It is not meant to identify the impairments that should be taken into account when determining the RFC. In fact, ‘[i]n assessing RFC, the adjudicator must consider limitations and restrictions imposed by all of an individual’s impairments, even those that are not ‘severe.’” *Buck v. Berryhill*, 869 F.3d 1040, 1048–49 (9th Cir. 2017) (quoting SSR 96-8p, 1996 WL 374184, at *5).

Here, the ALJ found that Baumgartner did not have a mental impairment that qualified as severe. Baumgartner argues that the ALJ failed to consider how psychological and physical factors combined to exacerbate her pain symptoms. *See Lester v. Chater*, 81 F.3d 821, 829 (9th Cir. 1996) (“A claimant’s illnesses must be considered in combination and must not be fragmentized in evaluating their effects.”) She relies, in particular, on the testimony of Dr. Belzer

1 to argue that her pain symptoms are more severe than the ALJ acknowledged.

2 Baumgartner is correct that the ALJ's written decision did not directly address the extent to
3 which psychological factors exacerbated her pain symptoms. The written decision acknowledged
4 that Baumgartner was diagnosed with a pain disorder, and the ALJ noted that she received
5 evaluation for "stress and coping in the context of chronic pain." AR 24. Yet the ALJ's step-two
6 analysis focused primarily on Baumgartner's history of and treatment for depression, anxiety,
7 insomnia, and difficulty in social functioning. AR 24-26.

8 However, the ALJ thoroughly addressed Baumgartner's subjective experience of pain at
9 step four of the sequential analysis. The ALJ did not frame the issue of Baumgartner's pain in
10 terms of psychological factors compounding her symptoms, but he did ask whether Baumgartner's
11 allegations as to the intensity, persistence, and limiting effects of her pain were consistent with the
12 record as a whole. And whereas the step-two analysis is merely a "de minimis screening device,"
13 *Webb*, 433 F.3d at 687, the ALJ considered all of the evidence when determining Baumgartner's
14 RFC at step four. As a result, as long as the ALJ's conclusions at step four were supported by
15 substantial evidence, any error at the step two phase would be harmless. *See Koble v. Berryhill*,
16 No. 16-CV-02792 NC, 2017 WL 2219992, at *6 (N.D. Cal. Apr. 10, 2017) (concluding that any
17 error at step two was harmless where evidence of allegedly severe impairment was properly
18 considered at step four) (citing *Lewis v. Astrue*, F.3d 909, 911 (9th Cir. 2007)).

19 The Commissioner points out that Baumgartner did not specifically challenge the ALJ's
20 credibility findings as to Baumgartner's allegations of pain. Even if Baumgartner were to
21 challenge the ALJ's treatment of her subjective experience of pain, however, the argument would
22 fail. Baumgartner's activities of daily life, the conservative treatment she was prescribed, her
23 refusal of recommended treatments, and the opinions of the state medical consultants, were all
24 valid reasons for the ALJ to discount Baumgartner's allegations.

25 Further, Baumgartner overstates the extent to which Dr. Belzer's testimony supports her
26 case. Dr. Belzer offered a hypothetical assessment of whether he would assign Baumgartner a
27 lower RFC if he found her pain allegations to be credible. AR 62-63. As noted above, substantial
28 evidence supported the ALJ's conclusion that Baumgartner's pain allegations were not entirely

1 consistent with the record as a whole.

2 Second, Baumgartner argues that she had more than mild limitations in social functioning.
3 Baumgartner argues that much of the chaos in her personal life, including the conflict that lead to
4 her dropping out of college, and her failed, abusive relationships, all point to a more serious social
5 impairment.

6 Here, too, the ALJ's conclusion was supported by substantial evidence. The ALJ cited to
7 Baumgartner's independence in her activities of daily living, and the support she says she receives
8 from friends. The ALJ also noted that on physical and mental exams, Baumgartner consistently
9 presented a mostly-normal affect. This evidence is adequate to support the ALJ's conclusion.
10 Moreover, even if the Court were to reject the ALJ's finding on this issue, the error would likely
11 be harmless. ALJs evaluate the severity of an alleged mental impairment by examining four broad
12 functional areas, only one of which is social functioning. *See* 20 C.F.R. § 404.1520a. The ALJ
13 might have determined that Baumgartner had more than mild impairment in social functioning and
14 still concluded that she did not have a mental impairment that qualified as severe.

15 Baumgartner raises various other objections to the ALJ's findings as to her mental
16 impairments. She argues that the ALJ was wrong to rely on the GAF scores that indicated the
17 least amount of impairment. Even the GAF tests that are more favorable to Baumgartner's
18 argument, however, suggested only moderate limitations. Additionally, Baumgartner accuses the
19 state psychological medical consultants, Dr. Aquino-Caro and Dr. Davis, of not providing
20 adequate explanations for their conclusions. The Court disagrees. The disability determination
21 reports prepared by both doctors summarize the medical evidence and explain why they both
22 concluded that Baumgartner did not qualify for benefits.

23 Finally, Baumgartner argues that the Commissioner's failure to dispute certain facts
24 requires the Court to enter judgment in her favor. The Court disagrees. Pursuant to the Court's
25 order, both parties submitted separate statements of fact in support of their summary judgment
26 motions. The Commissioner did not dispute any of the facts in Baumgartner's statement. Dkt.
27 No. 33-1 at 1. However, all of the facts asserted by Baumgartner, and stipulated to by the
28 Commissioner, support a conclusion that the ALJ applied the correct legal standards and based his

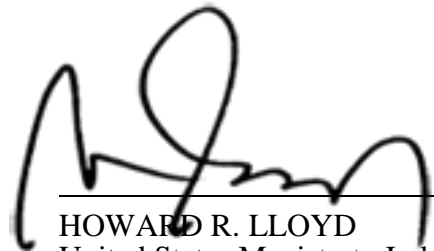
findings on substantial evidence.

V. CONCLUSION

Based on the foregoing, Baumgartner's motion for summary judgment is denied and the Commissioner's cross-motion for summary judgment is granted.

IT IS SO ORDERED.

Dated: 11/27/2017



HOWARD R. LLOYD
United States Magistrate Judge